

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Auction Event No. 35

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WT Doc. No. 02-276

**COMMENTS OF  
PCS PARTNERS, L.P.**

PCS Partners, L.P. (“PCS Partners”), by and through counsel, hereby submits comments in response to the Commission’s Public Notice requesting comment on the disposition of down payments and other matters relating to Auction Event No. 35.<sup>1</sup>

In the *Notice*, the Commission refers to the status of the capital markets and other economic events affecting the telecommunications industry, the Commission’s concerns about protecting the integrity of its spectrum auction program, and its sympathy for auction winners that would benefit from regaining access to the funds that they have deposited with the Commission in the course of Auction 35. In addition, the Commission notes Verizon’s argument that it is no longer obligated to pay the amount that it bid in Auction 35 because the Commission has failed to make timely delivery of the Auction 35 licenses to the winning bidders.

PCS Partners expresses no substantive opinion with regard to the facts or arguments that have been raised before the Commission or any other regulatory,

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<sup>1</sup> See *Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35 for Spectrum Formerly Licensed to NextWave Personal*

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legislative or adjudicatory body with regard to this proceeding or any other proceeding or inquiry relating to Auction 35. Moreover, PCS Partners expresses no substantive opinion with regard to the two scenarios for enabling Auction 35 participants to obtain refunds and withdraw pending Auction 35 applications, as described by the Commission in the *Notice*.

However, PCS Partners strongly believes that, as a matter of policy and procedure, the structural integrity of the Commission's spectrum auction program must be preserved and should not be modified on a selective or discriminatory basis. Consequently, whether motivated by judicial mandate, public policy considerations or otherwise, any modification of the Commission's rules in connection with Auction 35 should apply equally to all of the Commission's auctions and all auction participants.<sup>2</sup> Specifically, to the extent that the Commission permits winning bidders in Auction 35 the flexibility to reclaim the funds they have previously committed in that auction, the Commission should extend the same flexibility to any entity that is a high bidder in any other Commission auction and that has not received its license in a timely manner.

The current status of the capital markets and the other economic events described by the Commission in the *Notice* are not unique to Auction 35 participants, but bear on all members of the telecommunications industry. If the Commission fails to uniformly extend to all auction participants whatever additional flexibility that it may extend to Auction 35 participants, it would establish that post-hoc exceptions to the Commission's

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*Communications Inc., NextWave Power Partners, Inc. and Urban Comm—North Carolina, Inc.*, Public Notice, FCC 02-249 (Rel. Sep. 12, 2002) ("*Notice*").

<sup>2</sup> PCS Partners' comments are limited to changes to rules of general applicability. PCS Partners does not advocate any change to the Commission's rules and procedures relating to waivers.

auction rules are available for well-financed participants who can mount extensive adjudicatory campaigns in high-profile auctions, but not for less affluent auction participants or lower-profile auctions.

PCS Partners was the high bidder for certain licenses in several auctions, including Auction 35. While the financial scale of PCS Partners' commitment may be substantially smaller than that of other auction participants, the money that PCS Partners has committed to each auction is very significant from PCS Partners' perspective. The exigencies and theories quoted by the Commission in the *Notice* are not unique to Auction 35, but apply uniformly. It would be peculiar if certain Auction 35 participants were able to reclaim the money they had previously committed, but other Auction 35 participants, as well as the participants in other auctions, could not similarly reclaim money they had committed for licenses that have also been substantially delayed or that had been adversely affected by market conditions. Consequently, to the extent that the Commission modifies its rules to provide additional flexibility to Auction 35 participants, it must extend such flexibility to all similarly situated participants in all other Commission auctions.

Respectfully submitted,

/s/Vincent M. Paladini

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October 11, 2002

## **CERTIFICATE OF SERVICE**

I, Evelyn Opany, a secretary in the law firm of Piper Rudnick, LLP, do hereby certify that I have on this 11<sup>th</sup> day of October, 2002 caused copies of the foregoing Comments of PCS Partners, L.P. to be served to the following:

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/s/ Evelyn Opany

Evelyn Opany